

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GRANT MEADE,

Defendant-Appellant.

---

UNPUBLISHED

December 28, 2006

No. 265915

Wayne Circuit Court

LC No. 05-002771-01

Before: Meter, P.J., and O’Connell and Davis, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of third-degree criminal sexual conduct, MCL 750.520d(1)(a), and sentenced to 2-1/2 to 15 years’ imprisonment. He appeals as of right. We affirm in part and remand for correction of the presentence investigation report (PSIR) and for the trial court to respond to defendant’s challenge to the accuracy of information contained in the PSIR. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the trial court abused its discretion by failing to strike from the PSIR certain information that was contradicted by the testimony at trial. We review for an abuse of discretion a trial court’s response to a claim of inaccuracies in a defendant’s PSIR. *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003).

Although a trial court must respond to challenges to the accuracy of information contained in a PSIR, the court has wide latitude in responding to such challenges. *Spanke, supra* at 648. MCR 6.425(E)(2) provides:

*Resolution of Challenges.* If any information in the presentence report is challenged, the court must allow the parties to be heard regarding the challenge, and make a finding with respect to the challenge or determine that a finding is unnecessary because it will not take the challenged information into account in sentencing. If the court finds merit in the challenge or determines that it will not take the challenged information into account in sentencing, it must direct the probation officer to

(a) correct or delete the challenged information in the report, whichever is appropriate, and

(b) provide defendant's lawyer with an opportunity to review the corrected report before it is sent to the Department of Corrections.

Further, MCL 771.14(6) provides that "[i]f the court finds on the record that the challenged information is inaccurate or irrelevant, that finding shall be made a part of the record, the presentence investigation report shall be amended, and the inaccurate or irrelevant information shall be stricken accordingly before the report is transmitted to the department of corrections." In accordance with this authority, "[i]f the court finds the challenged information inaccurate or irrelevant, it must strike that information from the PSIR before sending the report to the Department of Corrections." *Spanke, supra* at 649.

Defendant contends that the PSIR incorrectly states that the victim indicated that he "provided her with several beers (6 to 8)." He argues that the evidence at trial established that the victim retrieved the beer herself from her home and that she consumed only four or five beers. At sentencing, defendant asked that the information be stricken from the PSIR, and the trial court responded, "It's done. That's not consistent with the evidence." The prosecution argues that the information was stricken and relies on a corrected copy of the PSIR attached as an appendix to its brief on appeal, which it contends was the trial court's copy. Nevertheless, the copy of the PSIR filed with this Court was not corrected and contains the challenged information. Accordingly, we remand this case to the trial court to verify that the PSIR was corrected pursuant to MCL 771.14(6), MCR 6.425(E)(2), and *Spanke, supra* at 649.

Next, defendant argues that the trial court erred by failing to respond to his objection that the PSIR erroneously indicates that he has one prior felony conviction. He contends that the prior charge was dismissed in drug court and that he was never convicted of the offense. The trial court changed the number of points scored under prior record variable (PRV) 2, regarding prior low severity convictions, to reflect that defendant has no prior low severity convictions. Nevertheless, the trial court did not respond to defendant's challenge that the first page of the PSIR improperly indicates that defendant has one prior felony conviction.

Under MCR 6.425(E)(2) and *Spanke, supra* at 648, a trial court is required to respond to challenges regarding the accuracy of information in a PSIR and must make a finding regarding a challenge or determine that a finding is unnecessary because the court will not take the challenged information into account in determining the defendant's sentence. MCR 6.425(E)(2). Because the trial court failed to respond to defendant's challenge, we direct the trial court to do so on remand pursuant to MCR 6.425(E)(2) and *Spanke, supra* at 648.

Defendant further argues that the trial court abused its discretion in scoring PRV 2 at five points and in scoring offense variable (OV) 3 at five points.

A sentencing court has discretion in determining the number of points to be assessed for each variable, provided that record evidence adequately supports a given score. *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006). "Scoring decisions for which there is any evidence in support will be upheld." *Id.*

Defendant contends that the trial court failed to respond to his objection to the scoring of PRV 2 at five points. MCL 777.52(1)(d) directs that a defendant be scored five points under PRV 2 if he has one prior low severity conviction. At sentencing, defendant argued that if his

PRV 2 score was reduced to zero, his PRV level would be reduced from level C to level B, which would affect his sentencing guidelines range. The trial court apparently agreed with defendant. The sentencing information report (SIR) reflects that the trial court changed the number of defendant's total PRV points, which changed his PRV level from level C to level B. Accordingly, defendant has already received his requested relief regarding PRV 2.

Defendant also argues that the trial court erred by scoring OV 3 at five points. MCL 777.33(1)(e) provides that five points may be scored under OV 3 if "[b]odily injury not requiring medical treatment occurred to a victim." The trial court determined that five points were appropriate under OV 3 because the victim experienced vaginal bleeding immediately after the sexual assault, consistent with a bodily injury. Because the evidence supports the trial court's scoring of OV 3, we are compelled to uphold the trial court's scoring of this variable. *Endres*, *supra* at 417.

Affirmed in part and remanded for correction of the PSIR and for the trial court to respond to defendant's challenge to the accuracy of information contained in the PSIR. We do not retain jurisdiction.

/s/ Patrick M. Meter  
/s/ Peter D. O'Connell  
/s/ Alton T. Davis